

## **CHAPTER 26.1-05 ORGANIZATION AND OPERATION OF DOMESTIC COMPANIES**

**26.1-05-01. General powers and duties of domestic company.** Every insurance company incorporated or formed by authority of any law of this state, except when otherwise expressly provided, may exercise the powers and is subject to the duties and liabilities provided by this title. The general law governing profit corporations applies to an incorporated domestic insurance company so far as the provisions are pertinent and not in conflict with provisions contained in this title relating to the company.

**26.1-05-02. Organization of domestic stock company - Number of persons required - Authorized lines.** Any number of persons not less than seven may form a corporation on the stock plan to carry on one or more of the following lines of insurance:

1. Life and annuity means insurance coverage on human lives, including benefits of endowment, annuities, and credit life.
2. Accident and health means insurance coverage for sickness, disease, injury, accidental death, and disability.
3. Property means insurance coverage for direct and consequential loss of or damage to property of every kind.
4. Casualty means insurance coverage against legal liability, including that for death, injury, or disability or damage to real or personal property.
5. Variable life and annuity means insurance coverage provided under variable life insurance contracts, variable annuities, or any other life insurance or annuity that reflects the investment experience of a separate account.

A stock insurance company incorporated under this chapter may carry the lines of insurance mentioned in this section which have been expressed in its articles of incorporation.

**26.1-05-02.1. Authority to define products.** The commissioner may adopt rules that define and set forth the specific insurance products found under each line of insurance set forth in section 26.1-05-02.

**26.1-05-03. Organization of domestic mutual life company - Number of organizers required.** Repealed by S.L. 1999, ch. 254, § 13.

**26.1-05-04. Capital stock and surplus requirements of domestic stock company - Exceptions.** A stock insurance company may not be incorporated under this chapter unless it has an authorized capital stock of at least five hundred thousand dollars and a surplus of at least five hundred thousand dollars. A domestic stock insurance company may not issue any insurance policy until at least fifty percent of the required capital stock, and all of the required surplus, has been paid in, the residue of capital stock to be paid in within twelve months from the time of filing the articles of incorporation. The commissioner, for good cause shown, may extend the time of payment of the residue for the further period of one year. If the minimum capital stock and surplus requirements at the time a stock insurance company incorporated under this chapter were less than the minimum requirements provided by this section, the stock insurance company shall increase its authorized and paid-in capital stock and surplus to the minimum requirements under this section according to the following schedule:

1. Capital of two hundred fifty thousand dollars and surplus of two hundred fifty thousand dollars by December 31, 1994.
2. Capital of three hundred seventy-five thousand dollars and surplus of three hundred seventy-five thousand dollars by December 31, 1995.

3. Capital of five hundred thousand dollars and surplus of five hundred thousand dollars by December 31, 1996.

Except as otherwise provided in this section, the total value of paid-in capital stock and surplus of a stock insurance company organized under the laws of this state may not at any time be depleted to an amount totaling less than one million dollars.

**26.1-05-05. Qualification of directors - Residence requirements of directors and executive officers.** Repealed by S.L. 1989, ch. 349, § 4.

**26.1-05-06. Articles of incorporation - Contents - Filing - Company name.** The articles of incorporation of a corporation organized under this chapter must set forth, in addition to what is required to be set forth under the general law governing profit corporations:

1. The kind of insurance proposed to be issued.
2. That the company will operate on the stock plan unless it is organized to engage in the life insurance business, in which case the articles must specify whether the company will operate on the stock or mutual plan.
3. The period for the commencement and termination of the company's fiscal year.
4. The period of its existence which may be perpetual.
5. The name of the company, which may be any name not previously in use by an existing corporation authorized to do business in this state, but the words "insurance company", or, if the business specified in the articles is that of life insurance and the business is to be conducted upon the mutual plan, the words "mutual life insurance company" must constitute a part of such name.

The articles must be filed in the office of the secretary of state and a certified copy must be filed with the commissioner. The commissioner may not issue a certificate to the company if, in the commissioner's judgment, the company's name too closely resembles the name of an existing corporation or is liable to mislead the public.

**26.1-05-07. Examination of articles by commissioner - Certificate - Filing.** The commissioner shall examine the articles of incorporation and any amendments to determine if the articles and any amendments are consistent with the constitution and laws of this state. The commissioner shall examine the company to ascertain whether it has complied with the requirements of law according to the nature of the business proposed to be transacted by it. If the commissioner is satisfied by the examination that the corporation has complied with the law, the commissioner shall deliver to it a certified copy of the articles of incorporation or amendments to the articles of incorporation and a certificate stating the corporation has complied with all requirements of law. The certified copy of the articles of incorporation or amendments to the articles of incorporation and of the certificate may be used for or against the company with the same effect as the originals and are conclusive evidence of the fact of organization of the company as of the date of the certificate.

**26.1-05-07.1. Approval of the domestic insurer - Premium waiver.**

1. An insurer organized under the laws of another state which is admitted to do business in this state for the purpose of writing insurance may be a domestic insurer by complying with the requirements of law relative to the organization and licensing of a domestic insurer of the same type in this state and by designating its principal place of business at a place in this state. For purposes of this section, a company is deemed to have designated its principal place of business at a place in this state if the company locates its home office in this state. If an insurer seeks to become a domestic insurer but is unable to designate its principal place of business in this state, the insurer may place on deposit with the Bank of North Dakota, upon the

approval of the commissioner, a sum established by the commissioner, which may not be withdrawn without the approval of the commissioner. An insurer that complies with this subsection is entitled to the certificates and licenses to transact the business of a domestic insurer in this state and is subject to the authority and jurisdiction of this state.

2. After an insurance company has redomesticated to this state and located and maintained its home office in this state, the insurance company is allowed a credit against the premium tax imposed and due under section 26.1-03-17 for an amount equal to the premium tax paid in this state during the first two years as a domestic company in this state. This credit must be used in the third and fourth years following the company's redomestication to this state and may not be carried over beyond the fourth year.

**26.1-05-07.2. Effects of redomestication.** In the discretion of the commissioner, the certificate of authority, insurance producer appointments and licenses, rates, and other items in existence at the time an insurer licensed to transact the business of insurance in this state transfers its corporate domicile to this state or another state by merger, consolidation, or any other lawful method, continue in effect upon the transfer if the insurer remains duly qualified to transact the business of insurance in this state. An outstanding policy of a transferring insurer remains in effect and does not need to be endorsed as to the new name of the company or its new location unless so ordered by the commissioner. A transferring insurer shall file new policy forms with the commissioner on or before the effective date of the transfer, but may use existing forms with appropriate endorsements as approved by the commissioner. A transferring insurer shall notify the commissioner of the details of the proposed transfer and shall file promptly any resulting amendments to corporate documents filed or required to be filed with the commissioner.

**26.1-05-07.3. Conversion to foreign insurer.** A domestic insurer, upon the approval of the commissioner, may transfer its domicile to another state in which it is admitted to transact the business of insurance. Upon transfer, the insurer ceases to be a domestic insurer and, if qualified, may be admitted to this state as a foreign insurer. The commissioner shall approve a proposed transfer unless the commissioner determines the transfer is not in the interests of the policyholders of the state.

**26.1-05-08. Stock subscriptions.** The individuals associated for the purpose of organizing a stock insurance company under this chapter, after having filed the articles of incorporation as required by section 26.1-05-06, may open books for subscriptions to the capital stock of the company and keep the books open until the full amount specified in the articles of incorporation is subscribed.

**26.1-05-09. Commissioner authorized to regulate solicitation of proxies.** A person, in contravention of any rules the commissioner may adopt as necessary or appropriate in the public interest or for the protection of investors, may not solicit or permit the use of the person's name to solicit any proxy, consent, or authorization in respect of any equity security of a domestic stock insurance company not listed on a national securities exchange and registered as such with the federal securities and exchange commission. This section applies to every domestic stock insurance company having one hundred or more stockholders of record. However, this section does not apply to any insurance company if ninety-five percent or more of its stock is owned or controlled by a parent or an affiliated insurance company and the remaining shares are held by less than five hundred stockholders. A domestic stock insurance company which files with the federal securities and exchange commission forms of proxies, consents, and authorizations which comply with the requirements of the Securities and Exchange Act of 1934, as amended, is exempt from this section.

**26.1-05-10. Equity security defined.** "Equity security" as used in sections 26.1-05-11 through 26.1-05-15 means any stock or similar security; any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; any such warrant or right; or any other security which the commissioner deems

to be of similar nature and considers necessary or appropriate to treat as an equity security, by any rules the commissioner adopts in the public interest or for the protection of investors.

**26.1-05-11. Statement of ownership required.** Every person who is directly or indirectly the beneficial owner of more than ten percent of any class of any equity security of a domestic stock insurance company, or who is a director or an officer of the company, shall file in the office of the commissioner within ten days after becoming beneficial owner, director, or officer a statement, in the form the commissioner prescribes, of the amount of all equity securities of the company of which the person is the beneficial owner. Within ten days after the close of each month when there has been a change in ownership during the month, the person shall file in the office of the commissioner a statement, in the form the commissioner prescribes, indicating the person's ownership at the close of the month and any changes in the person's ownership which occurred during the month.

**26.1-05-12. Gains to benefit company - Suit to recover.** For the purpose of preventing the unfair use of information which may have been obtained by a beneficial owner, director, or officer by reason of the relationship to a domestic stock insurance company, any profit realized by that person from any purchase and sale, or any sale and purchase, of any equity security of the company within any period of less than six months, unless the security was acquired in good faith in connection with a debt previously contracted, inures to and is recoverable by the company, irrespective of any intention on the part of the beneficial owner, director, or officer in entering into the transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six months. Suit to recover the profit may be instituted at law or in equity in any court of competent jurisdiction by the company, or by the owner of any security of the company in the name and in behalf of the company if the company fails or refuses to bring suit within sixty days after request or fails diligently to prosecute the suit; but no suit may be brought more than two years after the date the profit was realized. This section does not cover any transaction if the beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the commissioner by rule exempts as not comprehended within the purpose of this section.

**26.1-05-13. Conditions of sale.** A beneficial owner, director, or officer, directly or indirectly, may not sell any equity security of a domestic stock insurance company if the person selling the security or the person's principal does not own the security sold, or if owning the security, does not deliver it against such sale within twenty days thereafter, or does not within five days after the sale deposit it in the mails or other usual channels of transportation. A person does not violate this section if the person proves that notwithstanding the exercise of good faith the person was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

**26.1-05-14. Exceptions.** Sections 26.1-05-11 through 26.1-05-13 do not apply to equity securities of a domestic stock insurance company if the securities are registered, or are required to be registered, pursuant to section 12 of the Securities Exchange Act of 1934, as amended, or if the company does not have any class of its equity securities held of record by one hundred or more persons on the last business day of the year preceding the year in which equity securities of the company would be subject to sections 26.1-05-11 through 26.1-05-13 except for this exception. Sections 26.1-05-11 through 26.1-05-13 do not apply to foreign or domestic arbitrage transactions unless made in contravention of any rules the commissioner adopts to carry out the purposes of sections 26.1-05-11 through 26.1-05-15. Section 26.1-05-12 does not apply to any purchase and sale or sale and purchase, and section 26.1-05-13 does not apply to any sale, of an equity security of a domestic stock insurance company not held by the dealer in an investment account, by a dealer in the ordinary course of business and incident to the establishment or maintenance by the dealer of a primary or secondary market, otherwise than on an exchange as defined in the Securities Exchange Act of 1934, for the security.

**26.1-05-15. Rulemaking authority - Liability.** The commissioner may adopt any rules necessary to administer sections 26.1-05-11 through 26.1-05-14. The commissioner may classify domestic stock insurance companies, securities, and other persons or matters within the

commissioner's jurisdiction and define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market. Sections 26.1-05-11 through 26.1-05-13 do not impose any liability for any act done or omitted in good faith in conformity with any rule of the commissioner, notwithstanding that the rule may, after the act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

**26.1-05-16. Capital stock reduced - Examination and certificate of commissioner.**

When the capital stock of an insurance company is impaired, the company, upon a vote of a majority of the stock represented at a meeting legally called for that purpose, may reduce its capital stock, and the number of shares thereof, to an amount not less than the minimum required by law. No part of its assets and property, however, may be distributed to its stockholders. Within ten days after the meeting, the company shall submit to the commissioner a certificate setting forth the proceedings, the amount of the reduction, and the assets and liabilities of the company, signed and sworn to by its president, secretary, and a majority of its directors. The commissioner shall examine the facts in the case. If the facts conform to law and in the commissioner's judgment the proposed reduction may be made without prejudice to the public, the commissioner shall endorse the commissioner's approval upon the certificate. Upon the filing of the certificate so endorsed, the company's articles of incorporation are deemed to be amended to conform to the certificate, the commissioner's certificate must be issued to that effect, and the company may transact business upon the basis of such reduced capital as though the same were its original capital. The company, by a majority vote of its directors after the reduction, may require the return of the original certificates of stock held by each stockholder in exchange for new certificates in lieu thereof for the number of shares each stockholder is entitled to in the proportion that the reduced capital bears to the original capital.

**26.1-05-17. Transfer of stock pending examination - Liability.** A transfer of the stock of any domestic insurance company made during the pendency of any examination does not release the party making the transfer from the party's liability for loss which may have occurred previous to the transfer.

**26.1-05-18. Investment of funds must be authorized by directors - Prohibited investment practices.** An investment or loan, except a policy loan, may not be made by any domestic insurance company unless the investment or loan first has been authorized by the board of directors of the company or by an investment committee appointed by the board of directors of the company charged with the duty of supervising the making of loans or investments by the company. A domestic insurance company may not:

1. Subscribe to or participate in any underwriting of the purchase or sale of securities or property.
2. Enter into any transaction for the purchase or sale of any securities or property on account of the company jointly with any other person, firm, or corporation, except for authorized real estate joint ventures, partnerships, and limited liability companies.
3. Enter into any agreement to withhold any of its property from sale, but the disposition of its property at all times is within the control of its board of directors, except for authorized real estate joint ventures, partnerships, and limited liability companies.
4. Invest any of its funds in, or loan the funds upon, the shares of stock of any corporation except as otherwise provided in this chapter.
5. Invest any of its funds in, or loan the funds upon, any bonds or obligations, except government, state, or municipal securities, which are not secured by adequate collateral security, except as otherwise provided in this chapter.

6. Invest its capital, surplus funds, or other assets in, or loan the same upon, any property owned by any officer or director of the company, or by any of the immediate members of the family of any such officer or director, nor in any manner which will permit any such officer or director to gain through the investment of funds of the company.

**26.1-05-19. Authorized investment of funds of insurance companies.** A domestic insurance company may invest any of its funds and accumulations in:

1. Securities or obligations made specifically eligible for such investment by law.
2. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, the District of Columbia, or by any state, territory, or insular possession of the United States or by any county, city, township, school district, or other civil division of a state, including loan-backed securities, those payable from special revenues or earnings specifically pledged for the payment thereof, and those payable from special assessments, including rights to purchase or sell these securities or obligations if these rights are traded upon a contract market designated and regulated by a federal agency and purchased for legitimate hedging, nonspeculative purposes.
3. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by any instrumentality or agency of the United States of America, including rights to purchase or sell these securities or obligations if these rights are traded upon a contract market designated and regulated by a federal agency and purchased for legitimate hedging, nonspeculative purposes.
4. Notes or bonds secured by mortgage or deed of trust insured by the federal housing administrator, debentures issued by the federal housing administrator, and securities issued by national mortgage associations.
5. Bonds issued by the industrial commission under chapter 4-36.
6. Bonds guaranteed under former chapter 6-09.2.
7. Bonds issued by the public finance authority pursuant to chapter 6-09.4.
8. Bonds issued by the state board of higher education under chapter 15-55.
9. Revenue bonds issued by the state water commission.
10. Interim financing notes issued by the state water commission pursuant to chapter 61-02.
11. Warrants issued by a city under chapter 40-24.
12. Bonds or notes issued pursuant to chapter 40-33.2.
13. Bonds or other obligations issued pursuant to chapter 40-58.
14. Bonds issued under chapter 40-61.
15. Bonds issued under chapter 54-30.
16. Notes or other evidences of indebtedness of the North Dakota life and health insurance guaranty association not in default.
17. Notes or other interest-bearing obligations of any state development corporation of which the company is a member, issued in accordance with chapter 10-30.

18. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the Dominion of Canada or any province thereof, or by any municipality or district therein, provided that the obligations are valid and legally authorized and issued.
19. Mortgage bonds and debentures of any solvent railway company duly incorporated and authorized under the laws of this state or of any other state or insular possession of the United States, or of the Dominion of Canada or of any province thereof.
20. Obligations, including bonds or evidences of indebtedness, or participation in those bonds or evidences of indebtedness, or loan-backed securities, which are issued, assumed, guaranteed, or insured by any solvent legal entity duly incorporated and authorized under the laws of the United States of America or of any state or insular possession thereof, or of the Dominion of Canada or of any province thereof, including rights to purchase or sell these securities or obligations if these rights are traded upon a contract market designated and regulated by a federal agency and purchased for legitimate hedging, nonspeculative purposes.
21. Preferred stock, of, or common or preferred stock guaranteed as to dividends by, and common stock of, any corporation organized under the laws of the United States, any state or possession of the United States, the Dominion of Canada or any province of the Dominion of Canada, including rights to purchase or sell these securities or obligations if these rights are traded upon a contract market designated and regulated by a federal agency and purchased for legitimate hedging, nonspeculative purposes, subject to the following restrictions and limitations:
  - a. Investments in preferred, guaranteed, and common stocks issued or guaranteed by a single person may not exceed three percent of the insurance company's admitted assets.
  - b. Investments in preferred, guaranteed, and common stocks may not exceed in the aggregate the greater of twenty-five percent of admitted assets or one hundred percent of the capital and surplus of a nonlife insurance company.
  - c. Investments in preferred, guaranteed, and common stocks may not exceed in the aggregate twenty percent of the life insurance company's admitted assets.

For purposes of this section, preferred stock includes mandatory sinking fund preferred stock. Common stock includes shares of mutual funds, master limited partnerships trading as common stock, and American deposit receipts that are traded on a nationally recognized securities exchange or on the national association of securities dealers automated quotations system.

22. Savings accounts, under certificates of deposit or in any other form, in solvent banks and trust companies which have qualified for federal deposit insurance corporation protection, shares and savings accounts, under certificates of deposit, investment certificates, or in any other form, in solvent savings and loan associations organized under federal law or state law of any state which have qualified for federal savings and loan insurance corporation protection, and shares and deposit accounts, under certificates of deposit or in any other form, in solvent state or federally chartered credit unions which are insured by the national credit union administration. Investments in the shares and accounts are not limited to, or by, the amount of any such insurance protection. Short-term or liquidity investments such as certificates of deposit, repurchase agreements, bankers' acceptances, commercial paper, money market mutual funds, or current interest accounts in solvent banks and trust companies, savings and loan associations, state or federally chartered credit unions, investment brokerage houses which are regulated by a federal agency, and such other types of investments as may be deemed appropriate and authorized by rule by the commissioner.

23. Loans made upon the security of its own policies, if a life insurance company, but no loan on any policy may exceed the reserve value thereof.
24. Notes secured by mortgages on unencumbered real estate, including construction loans and leaseholds substantially having and furnishing the rights and protection of a first real estate mortgage, within the United States of America or any province of the Dominion of Canada. An investment in a construction loan covering any single parcel of real estate may not exceed one quarter of one percent of the admitted assets of the company. Investments in construction loans in the aggregate may not exceed two percent of the admitted assets of the company. No loan may be made under this subsection unless at the date of acquisition the total indebtedness secured by such lien does not exceed eighty percent of the value of the property upon which it is a lien, provided that the loan requires immediate scheduled payment in periodic installments of principal and interest and periodic payments are made no less frequently than annually. A loan that does not meet these requirements may not exceed seventy-five percent of the value of the property. A loan may be made in an amount exceeding these percentage limitations if the value of the property mortgaged in excess of the limitation is guaranteed or insured by the federal housing administration or guaranteed by the administrator of veterans' affairs or is insured by private mortgage insurance through an insurance company authorized to do business in this state. Loans may be amortized on the basis of a final maturity not exceeding thirty years from the date of the loan with an actual maturity date of the loan at any time less than thirty years. A loan on a single-family dwelling, when the loan is amortized on the basis of a final maturity twenty-five years or less from the date of the loan, may be made in an amount not exceeding eighty percent of the value of the property mortgaged. The loan on a single-family dwelling may be made in an amount exceeding eighty percent so long as any amount over eighty percent of the value of the property mortgaged is insured by private mortgage insurance through an insurance company authorized to do business in this state. Buildings may not be included in the valuation of such property unless they are insured and the policies are made payable to the company as its interest may appear. A loan may not be made in excess of the amount of insurance carried on the buildings plus the value of the land. No insurance company may hold less than the entire loan represented by the bonds or notes described in this subsection except that a company may own part of an aggregate obligation if all other participants in the investment are insurance companies authorized to do business in North Dakota or banks whose depositors are insured by the federal deposit insurance corporation or savings and loan associations whose members are insured by the federal savings and loan insurance corporation or unless the security of the bonds or notes, as well as all collateral papers, including insurance policies, executed in connection therewith, are made to and held by a trustee which is a solvent bank or trust company having a paid-in capital of not less than two hundred fifty thousand dollars, except in case of banks or trust companies incorporated under the laws of the state of North Dakota, wherein a paid-in capital of not less than one hundred thousand dollars is required. In case of proper notification of default, the trustee, upon request of at least twenty-five percent of the holders of the bonds outstanding, and proper indemnification, shall proceed to protect the rights of the bondholders under the provisions of the trust indentures. An insurance company may acquire such an interest in real estate directly or as a joint venture, limited liability company, or through a limited or general partnership in which the insurance company is a partner. An insurance company acquiring such an interest in real estate on the basis of a joint venture, limited liability company, or through a limited or general partnership may acquire such an interest so long as the company's interest does not exceed seventy-five percent of the value of the property.
25. First mortgage bonds on improved city real estate in any state, issued by a corporation duly incorporated under the laws of any state of the United States of America, if the loans on the real estate are made in accordance with the requirements as to first mortgage loans in subsection 24.



26. Real estate for the production of income or for improvement or development for the production of income subject to the following provisions and limitations:
  - a. Real estate used primarily for farming or agriculture may not be acquired under this subsection.
  - b. Investments made by any company under this subsection may not at any time exceed ten percent of the admitted assets of the company.
  - c. An investment in any single parcel of real estate acquired under this subsection may not exceed two percent of the admitted assets of the company.
  - d. The real estate, including the cost of improvements, must be valued at cost and the improvements may be depreciated annually at an average rate of not less than two percent of the original cost.
  - e. An insurance company may acquire such real estate or an interest in such real estate directly or as a joint venture, limited liability company, or through a limited or general partnership in which the insurance company is a partner.
27. Land and buildings used as home or regional offices, subject to the following provisions and limitations:
  - a. Land and buildings thereon owned by the company in which the square footage of the property is more than fifty percent occupied by the company and its affiliates.
  - b. Investments or total commitment in the land and buildings may not aggregate more than ten percent of the company's admitted assets without the consent of the commissioner.
  - c. The real estate, including the cost of improvements, must be valued at cost and the improvements must be depreciated annually at an average rate of not less than two percent of the original cost.
28. Investments by loans or otherwise, in the purchase of electric or mechanical machines, including software, constituting a data processing system. The company may hold the system as an admitted asset for use in connection with the business of the company if its aggregate cost does not exceed three percent of the company's capital and surplus and the cost of the components constituting the system is fully amortized over a period of not to exceed five years. If a data processing system consists of separate components acquired at different times, then the cost of each component must be amortized over a period not to exceed five years commencing with the date of acquisition of each component.
29. Promissory notes amply secured by the pledge of bonds or other evidences of indebtedness in which the company is authorized to invest its funds by the provisions of this section.
30. Ownership of, or loans secured by first liens upon:
  - a. Production payments or interests therein payable from oil, gas, other hydrocarbons, or other minerals in producing properties located in areas of established and continuing production within the United States or the adjacent continental shelf areas, which production payments are dischargeable from property interests appraised by independent petroleum engineers at the time of the acquisition or loan, based on current market prices, to have a current market value of at least one hundred fifty percent of the purchase price of, or the amount loaned upon the security of, such production payments. The term

"production payments" means rights to oil, gas, other hydrocarbons, or other minerals in place or as produced which entitle the owner thereof to a specified fraction or percentage of production or the proceeds thereof, until a specified or determinable sum of money has been received, and which have investment qualities and characteristics in which the speculative elements are not predominant.

- b. Royalty interests, overriding royalty interests, net profit interests, leasehold interests, working interests, or other interests or rights in oil, gas, other hydrocarbons, or other minerals in place or as produced, which interests or rights may be subject to production payments of the nature described in subdivision a.

No domestic insurance company may invest more than five percent of its admitted assets in the ownership of such interests or rights. In determining the amount invested in such interests or rights at any given time, each insurance company may evaluate such interests or rights in such manner as will permit it to amortize the interests or rights over a period of time during which not more than seventy-five percent of the dollar value of the recoverable production accruing to such interests or rights will be produced, as determined by independent petroleum engineers at the time of investment.

31. Obligations secured by a pledge of personal property, as follows:

- a. Tangible personal property, or equipment trust certificates or other instruments evidencing an interest in or debt secured by tangible personal property, if there is a right to receive determined portions of rental, purchase, or other fixed obligatory payments for the use or purchase of such tangible personal property.
- b. Bonds, notes, or other evidences of indebtedness secured wholly or partially by tangible personal property, provided that at the date of acquisition the amount of such indebtedness does not exceed sixty-six and two-thirds percent of the value of such tangible personal property.

The aggregate outstanding investment made under subdivisions a and b may not exceed five percent of the admitted assets of the life insurance company.

- 32. Loans, securities, or investments issued by a small business investment company created by the Myron G. Nelson Fund, Incorporated, and licensed by the small business administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et seq.] or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.].
- 33. Loans, securities, or investments in addition to those permitted in this section, whether or not the loans, securities, or investments qualify or are permitted as legal investments under its charter or under other provisions of this section or under other provisions of the laws of this state. The aggregate admitted value of the company's investments under this section may not at any one time exceed either seven percent of the company's admitted assets, or the amount equal to the company's capital and surplus in excess of the minimum capital and surplus required by law, whichever is less.
- 34. Loans, securities, or investments in a North Dakota low-risk incentive fund organized under chapter 26.1-50. The aggregate admitted value of the company's investment under this subsection may not at any time exceed the lesser of five percent of the company's admitted assets or the amount equal to the company's capital and surplus in excess of the minimum capital and surplus required by law. A company

making an investment under this subsection may value at par any investment purchased at par.

35. Foreign investments of substantially the same types as those permitted under subsections 20 and 21, subject to the following restrictions and limitations:
- a. Foreign investments issued, assumed, guaranteed, or insured by a single person may not exceed three percent of the insurance company's admitted assets.
  - b. Foreign investments in a single foreign jurisdiction may not exceed in the aggregate ten percent of the insurance company's admitted assets as to a foreign jurisdiction that has a sovereign debt rating of one as determined by the securities valuation office of the national association of insurance commissioners or three percent of the insurance company's admitted assets as to any other foreign jurisdiction.
  - c. Foreign investments may not exceed in the aggregate twenty percent of the insurance company's admitted assets.

Investments acquired under this subsection shall be aggregated with investments of the same type made under subsection 21 for purposes of determining compliance with the limitations contained in that subsection. For purposes of this subsection, a foreign investment means an investment in a foreign jurisdiction or an investment in a legal entity domiciled in a foreign jurisdiction. A foreign jurisdiction is any jurisdiction other than the United States, any state or possession of the United States, the Dominion of Canada, or any province of the Dominion of Canada.

The commissioner may adopt rules as to investments which are permissible for any domestic insurance company which may waive or increase any limitation on investments or authorize companies to invest their funds in investments which are not specifically mentioned in statutes relating to investments if the commissioner finds, after notice and hearing, that such funds would be well invested and available for the payment of losses. The commissioner, in adopting such rules, may not be any more restrictive, or place any greater limitations on, any type of investment in which companies are authorized by statute to invest their funds.

This section does not prohibit a company from taking any action deemed necessary or expedient for the protection of investments made by it or from accepting in good faith, to protect its interests, securities, or property not mentioned in this section in payment or to secure debts due to it.

**26.1-05-19.1. Call options - Financial futures contracts.** The purchase and sale of put options or call options or financial futures contracts are subject to this section.

1. As used in this section:
  - a. "Call option" means an exchange-traded option contract under which the holder has the right to buy, or to make a cash settlement in lieu of buying, a fixed number of shares of stock, a fixed amount of an underlying security, or an index of underlying securities at a stated price on or before a fixed expiration date.
  - b. "Commodity futures trading commission" means the trading regulatory agency charged and empowered under the Commodity Futures Trading Commission Act of 1974, as amended, with the regulation of futures trading in commodities.
  - c. "Financial futures contract" means an exchange-traded agreement to make or take delivery of, or to make cash settlement in lieu of delivery of, a fixed amount of an underlying security, or an index of underlying securities, on a specified date or during a specified period of time, or a call or put option on

such an agreement, made through a registered futures commission merchant on a board of trade that has been designated by the commodity futures trading commission as a contract market. "Financial futures contract" includes a contract involving United States treasury bills, bonds, or notes; securities or pools of securities issued by the government national mortgage association; bank certificates of deposit; Standard and Poor's 500 stock price index; New York stock exchange composite index; or any other agreement that has been approved by and which is governed by the rules and regulations of the commodity futures trading commission and the respective contract markets on which such financial futures contracts are traded.

- d. "Margin" means any type of deposit or settlement made or required to be made with a futures commission merchant, clearinghouse, or safekeeping agent to ensure performance of the terms of the financial futures contract. For the purposes of this section, "margin" includes initial, maintenance, and variation margins as those terms are commonly and customarily employed in the futures industry.
  - e. "Put option" means an exchange-traded option contract under which the holder has the right to sell, or to make a cash settlement in lieu of sale of, a fixed number of shares of stock, fixed amount of an underlying security, or an index of underlying securities at a stated price on or before a fixed expiration date.
  - f. "Securities and exchange commission" means the federal regulatory agency charged and empowered under the Securities Exchange Act of 1934, as amended, with the regulation of trading in securities.
  - g. "Underlying security" means the security subject to being purchased or sold upon exercise of a call option or put option, or the security subject to delivery under a financial futures contract.
2. The purchase and sale of put options or call options may take place under the following conditions:
- a. An insurance company may purchase put options or sell call options with regard to underlying securities owned by the insurance company, underlying securities that the insurance company may reasonably expect to obtain through exercise of warrants or conversion rights owned by the insurance company at the time the put option is purchased or the call option is sold, or to reduce the economic risk associated with an insurance company asset or liability, group of such assets or liabilities, or assets, liabilities or groups of assets or liabilities reasonably expected to be acquired or incurred by the insurance company in the normal course of business. Such assets or liabilities must be subject to an economic risk, such as changing interest rates or prices.
  - b. An insurance company may sell put options or purchase call options to reduce the economic risk associated with an insurance company asset or liability group of such assets or liabilities, or assets, liabilities or groups of assets or liabilities reasonably expected to be acquired or incurred by the insurance company in the normal course of business, or to offset obligations and rights of the insurance company under other options held by the insurance company pertaining to the same underlying securities or index of underlying securities.
  - c. An insurance company may purchase or sell put options or call options only on underlying securities, or an index of underlying securities, which are eligible for investment by a life insurance company under the laws of this state.
  - d. An insurance company may purchase or sell put or call options only through an exchange that is registered with the securities and exchange commission as a

national securities exchange pursuant to the provisions of the Securities Exchange Act of 1934, as amended.

- e. An insurance company may not purchase call options or sell put options, if the purchase or sale could result in the acquisition of an amount of underlying securities which, when aggregated with current holdings, exceeds applicable limitations imposed under the laws of this state for investment in those particular underlying securities.
  - f. The net amount of premiums paid for all option contracts purchased minus the premiums received for all option contracts sold, plus the net amount of financial futures contracts purchased minus financial futures contracts sold, may not at any time exceed in the aggregate five percent of the insurance company's admitted assets.
3. The purchase and sale of financial futures contracts may take place under the following conditions:
- a. An insurance company may purchase or sell financial futures contracts for the purpose of hedging against the economic risk associated with an insurance company asset or liability, group of such assets or liabilities, or assets, liabilities or groups of assets or liabilities reasonably expected to be acquired or incurred by the insurance company in its normal course of business. Such assets or liabilities must be subject to an economic risk, such as changing interest rates or prices.
  - b. An insurance company may not purchase or sell financial futures contracts or options on such contracts, if the purchase or sale could result in the acquisition of an amount of underlying securities which, when aggregated with current holdings, exceeds applicable limitations imposed under laws of this state for investment in those particular underlying securities.
  - c. The net amount of financial futures contracts purchased minus financial futures contracts sold, plus the net amount of premiums paid for all option contracts purchased minus the premiums received for all option contracts sold, may not at any time exceed in the aggregate five percent of the insurance company's admitted assets. For the purposes of transactions in financial futures contracts, the admitted assets limitation is calculated by taking the net asset value of the property used to margin the financial futures contract positions, plus option premiums paid on financial futures contracts, less option premiums received on financial futures contracts.
4. This section may not be utilized by a domestic insurance company without the prior approval of the commissioner.

**26.1-05-20. Limitation on purchase and conveyance of real property.** A domestic insurance company may acquire, hold, and convey only the real property that has been:

- 1. Mortgaged to it in good faith by way of security for loans previously contracted or for moneys due to it.
- 2. Conveyed to it in satisfaction of debts previously contracted in the course of its dealings.
- 3. Purchased at sales on judgments, decrees, or mortgages obtained or made for debts previously contracted in the course of its dealings.

4. Acquired as an investment for the production of income or has been acquired to be improved or developed for an investment for the production of income as provided by law.

Any company may improve real property so acquired or remodel existing improvements and exchange the real property for other real property or securities, and real property acquired by the exchange may be improved or the improvements remodeled.

**26.1-05-21. Real property acquired by domestic company - When sale required.** All property acquired by a domestic insurance company in any manner specified in subsections 1, 2, and 3 of section 26.1-05-20 which is not necessary for the accommodation of the company or for the convenient transaction of its business must be sold and disposed of within two years after the company has acquired title, and as to any property so acquired which was necessary for the accommodation of the company or for the convenient transaction of its business, within two years after the property has ceased to be necessary for the accommodation of business. A company may not hold any of such property for a period longer than is specified in this section unless it procures a certificate from the commissioner stating that the company's interests will suffer materially by the forced sale of the property. If the certificate is obtained, the time for the sale may be extended to the time the commissioner directs in the certificate. A company may select real property acquired under subsections 1, 2, and 3 of section 26.1-05-20 other than real property used primarily for farming and agriculture, and hold the property as an investment for income, not exceeding the total amount permitted by law for such purpose, and the property is not subject to the limitations of this section.

**26.1-05-22. Liabilities of officers and directors of domestic company.** Any officer or director of a domestic insurance company who makes or authorizes an investment or loan in violation of section 26.1-05-19 or 26.1-05-20 is liable personally to the stockholders of a stock insurance company, or to the policyholders of a mutual insurance company, for any loss occasioned thereby. If a company is under liability for losses equal to its net assets and the president or directors, knowing of the liability, make or assent to further insurance, they are liable personally for any loss under the insurance. If the directors allow to be insured on a single risk a larger sum than that permitted under section 26.1-03-01, they are liable for any loss thereon above the amount the company might insure lawfully, unless the excess is reinsured as required by that section.

**26.1-05-23. Domestic life company to deposit securities with commissioner.** A domestic life insurance company must physically deposit with the commissioner, on the date on which the company files its annual statement, securities of a value equivalent to the net value of all policies the company has in force. The securities must be of a kind specified in section 26.1-05-19. The company, in lieu of the physical deposit, may file, and the commissioner shall accept, a detailed, verified statement setting forth with sufficient particularity a list of the items of security held by the company in an amount equivalent to the net value of all policies in force. The securities specified in the list, although retained by the company, must be kept separate and distinct from the other securities of the company and must be held as a deposit for the policyholders of the company under this section. This section does not prevent or prohibit a domestic life insurance company from depositing with the commissioner securities in an amount to exceed the cash value of its policies.

**26.1-05-24. Commissioner may examine books and securities of domestic life company.** The commissioner may examine the books, papers, securities, and business of any domestic life insurance company at any time, or may authorize any other suitable person to make the examination. The commissioner, or person authorized to make an examination, may examine under oath any officer or agent of the company, or any other person, relative to the business and management of the company. If upon the examination the commissioner is of the opinion that the company is insolvent or that its condition is such as to render a further continuance of its business hazardous, the commissioner may require the company to deposit in the commissioner's office all securities specified in any list filed pursuant to section 26.1-05-23 and not deposited.

**26.1-05-25. Securities may be exchanged - Withdrawal of securities.** A domestic life insurance company, at any time, may change the securities on physical deposit or designated on the statement of securities held by the company in lieu of a deposit by substituting a like amount of the character required in the first instance. If the annual valuation of the policies in force shows them to be less than the amount of the security deposited, the company may withdraw the excess, but at least twenty-five thousand dollars worth of securities must remain on deposit at all times.

**26.1-05-26. Dividends on securities property of company.** A domestic life insurance company having bonds or other securities on deposit with the commissioner may collect the dividends or interest thereon upon delivering to its authorized agent the coupons or other evidence of interest as the same becomes due. If any company, however, fails to deposit additional securities when and as called for by the commissioner, or pending any proceedings to close up or enjoin the operations of the company, the commissioner shall collect the dividends or interest and add the same to the securities on deposit.

**26.1-05-27. Certificate of compliance with security deposit law - Issuance - Renewal - Attachment to policies.** The commissioner shall issue a certificate to a domestic life insurance company to the effect that the company does business under the compulsory reserve deposit law of North Dakota and maintains in the office of the commissioner a deposit of an amount in excess of the net value of all outstanding policies in stipulated and first-class securities deposited for the protection of the policyholders of the company when the company has:

1. Filed its annual statement; and
2. Deposited securities with the commissioner or filed a detailed list of securities held by the company in lieu of the deposit with the commissioner, the deposit and list to be renewed annually on or before March first.

The certificate expires on March thirty-first of the ensuing year and may be renewed annually upon the filing of a statement of renewal along with any additional physical deposit or additions to the statement of securities held by the company in lieu of a deposit and upon compliance with the other provisions of this section. A copy of the certificate may be attached to any insurance policy issued by any domestic life insurance company after the certificate has been issued to it.

**26.1-05-28. Securities vest in policyholders on default of domestic life insurance company.** The securities of a defaulting or insolvent domestic life insurance company, or of a company against which proceedings for dissolution are pending, which are on deposit with the commissioner, vest in the state for the benefit of the policies on account of which the deposit was made, and the proceeds, by order of the court upon final hearing, must be divided among the policyholders proportionately to the last annual valuation of the policies, or, at any time, must be applied to the purchase of reinsurance for their benefit.

**26.1-05-29. Nonapplicability of reserve deposit provisions to fraternal benefit societies.** Sections 26.1-05-23 through 26.1-05-28 do not apply to fraternal benefit societies.

**26.1-05-30. Disbursements by domestic life insurance company to be made on voucher - Requirements.** No domestic life insurance company may make any disbursement of one hundred dollars or more unless evidenced by a voucher signed by or on behalf of the person receiving the money and correctly describing the consideration for the payment. If the expenditure is for both services and disbursements, the voucher must set forth the services rendered and an itemized statement of the disbursements made. If the expenditure is in connection with any matter pending before any legislative or public body or before any department or officer of any state or government, the voucher, in addition, must describe correctly the nature of the matter and of the interest of the company therein. When a voucher cannot be obtained, the expenditure must be evidenced by an affidavit describing the character and object of the expenditure and stating the reason for not obtaining the voucher.

**26.1-05-31. Salaries and expenses of officers and agents of domestic life insurance company - Restrictions.** A domestic life insurance company may not:

1. Pay any salary, compensation, or emolument to any senior officer, trustee, or director thereof, amounting in any one year to more than one hundred thousand dollars, unless the payment thereof first is authorized by the board of directors of the company.
2. Grant any pension to any officer, director, or trustee thereof, or to any member of the officer's, director's, or trustee's family after death, except that it may provide a pension in pursuance of the terms of a retirement plan adopted by the board of directors and approved by the commissioner for any person who is or has been a salaried officer or employee of the corporation and who may retire by reason of age or disability.

**26.1-05-32. Impairment of capital or surplus of domestic life insurance company - Determination of deficiency - Notice not to issue policies.** If a domestic stock life insurance company's minimum basic paid-in capital or surplus required by section 26.1-05-04 or the minimum basic surplus of a domestic mutual insurance company required by section 26.1-12-10 becomes impaired, the commissioner shall prohibit the company and its agents from issuing new policies until the deficiency is cured. The commissioner shall determine the amount of the deficiency, notify the company of the deficiency and require the company to cure the deficiency, and require the company to file proof thereof with the commissioner within a period specified in the notice. The period may not be less than thirty days nor more than ninety days from the date of issuance of the notice.

**26.1-05-33. Dividends to be paid by domestic fire insurance company from surplus profits only - Compensation.** A domestic fire insurance company may not declare any dividend except from the surplus profits arising from its business. In estimating the surplus profits, there must be reserved as unearned premiums a sum equal to forty percent of the amount of premiums on all unexpired risks and policies, and there also must be reserved all sums due the company on bonds, mortgages, stocks, and book accounts upon which no part of the principal or accrued interest has been paid during the year preceding the estimate of the profits and upon which suit for foreclosure or collection has been commenced, or a judgment upon which has remained unsatisfied for more than one year.

**26.1-05-34. Reciprocal states - Restrictions on domestic companies - Exceptions.** As used in this section, "reciprocal state" means a state the laws of which prohibit an insurance company domiciled therein from insuring the lives or persons of residents of, or property or operations located in, the state of North Dakota unless it holds a valid and subsisting certificate of authority issued by the insurance commissioner of this state. The prohibition may be subject to the exceptions to this section.

A domestic insurance company may not enter into an insurance contract upon the life or person of a resident of, or property or operations located in, a reciprocal state unless it is authorized pursuant to the laws of that state to transact such insurance therein. The commissioner shall annually mail notice to every domestic insurance company, specifying the reciprocal states.

The exceptions to this section are:

1. Contracts entered into when the prospective insured is personally present in the state in which the insurance company is authorized to transact insurance when the insured signs the application.
2. The issuance of certificates under a lawfully transacted group life or group disability policy, when the master policy was entered into a state in which the insurance company was then authorized to transact insurance.



3. The removal or continuance in force, with or without modification, of contracts otherwise lawful and which were not originally executed in violation of this section.

**26.1-05-35. Participation in clearing corporations and book entry systems - Rulemaking authority.** A domestic insurance company may participate, subject to a written agreement with a custodian and subject to rules adopted by the commissioner regarding such participation, in clearing corporations and the federal reserve book entry system.